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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	16240.S016	1141

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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07/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,643

Applicant(s)

MASSEY ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 32-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on May 14, 2007 is acknowledged. The traversal is on the ground(s) that claim 40 has been amended to remove the recitation "a hardware component disposed in the wooden insert at the opening of the metallic frame". Therefore, said recitation can no longer be used as the basis for maintaining the restriction requirement. This is not found persuasive because the recitations of the interior flange and the exterior flange in the subcombination claim 42 are not required by the combination claim 23.

The requirement is still deemed proper and is therefore made FINAL.

Claims 22-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 14, 2007.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, said outer spacer . . . continuing along the length of the assembly (claim 41) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed March 28, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the outer spacer continuing along the length of the assembly (claim 41). Note that figure 2 does not show the spacer 62 extending along the length of the assembly and it appears that the specification fails to provide support for said recitation. See paragraph 37.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 42, 43 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "opposite to the outer end of the passive door" on line 7 of claim 42 render the claims indefinite because it is unclear if the applicant is referring to the side portion or to the exterior portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21, 39 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. (6491326) in view of Hendrickson et al. (US 6684571) and Davis (US 3364624). Massey et al. discloses an astragal assembly 27 for attachment to a passive door 17 having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending from the exterior surface to the interior surface, comprising: a frame 28 having an exterior portion 83, an interior portion 84 spaced from and opposed to the exterior portion, and a side portion 45 extending between the exterior portion and the interior portion disposed opposite the outer edge of the passive door when the astragal assembly is affixed thereto, a gasket 7

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interconnected between said exterior portion and said side portion, an interior flange (labeled below) extending away from where said interior portion meets said side portion to engage the interior surface of the passive door when the astragal assembly is affixed thereto, and an exterior flange (labeled below) opposite said interior flange and extending away from where said exterior portion is connected to said gasket 7 to engage the exterior surface of the passive door when the astragal assembly is affixed thereto, wherein an elongated open channel is defined in the frame with sides formed by the exterior portion and the interior portion and a base formed by the side portion, the elongated open channel having an opening extending between the exterior portion and the interior portion and opposed to the side portion; and an insert 25, 46 (see figure 2) retained within the elongated open channel in the frame, a stop (labeled below), a second gasket 31, a thermal break 7, hooks 29, a strike plate 21. Massey et al. is silent concerning a spacer and a wooden insert.

However, Davis, in figure 4, discloses an astragal 15" comprising a spacer 28" having a distal end 60" protruding outwardly from a major surface (not numbered, but shown in figure 4) of a side portion in a direction that is substantially parallel to an interior flange 20" and substantially perpendicular to said major surface.

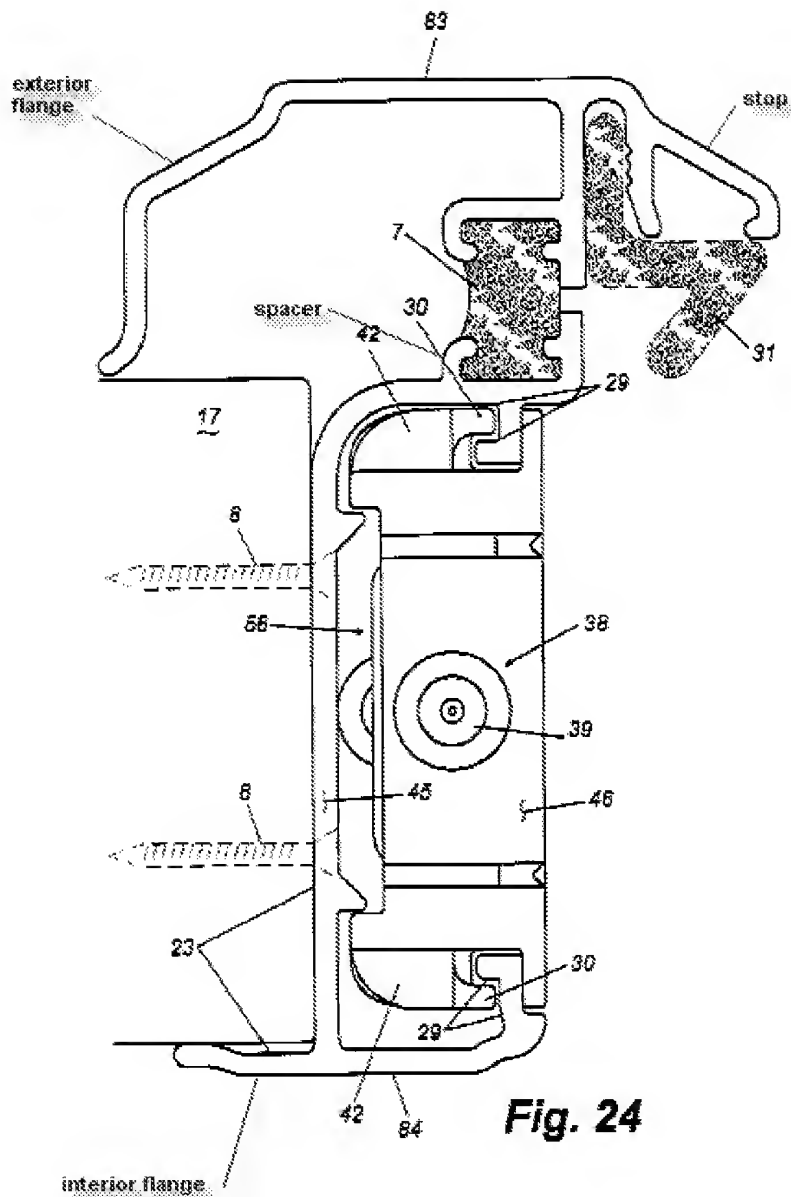
It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Additionally, Hendrickson et al. discloses an insert 76a having a wood construction.

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It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

With respect to claim 4, Massey et al. discloses that the insert 25 can comprise multiple pieces 106, 114 and 117 as shown in figure 16.



Claims 32-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis. Massey et al. discloses an astragal 27 comprising: a frame 28 including an exterior portion 83, an exterior flange (labeled above) extending from a first side of said exterior portion, and a stop (labeled above)

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extending from a second side of said exterior portion opposite to the first side, an interior portion 84 spaced from and opposed to the exterior portion, an interior flange (labeled above) extending from said interior portion opposite from and substantially parallel to said exterior flange, and a side portion 45 extending between where the exterior portion meets said exterior flange and where the interior portion meets said interior flange, a gasket 7 interconnected between said side portion and said exterior portion, a fastening formation 24 disposed on a major surface of the side portion, and

an insert member 25 retained substantially within a channel in the formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface for attachment to hardware;

wherein the exterior portion includes a hollow section (not numbered, but defined between the exterior flange and the thermal break 7) and a hook 29 extending into the channel that retains the insert member;

wherein the interior portion 84 includes a thin wall with a hook 29 extending into the channel that retains the insert member;

wherein the side portion includes a thermal break 7;

further comprising a strike plate 21 secured to the insert member;

wherein the frame 28 has a generally U-shaped cross section, with the side portion including a fastening formation 24 that attaches to a door edge such that the U-shaped cross section faces outward from the door edge.

Massey et al. is silent concerning a spacer that extends away from the channel.

However, Davis discloses an astragal 15", a spacer 28" having a distal end 60" protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 20".

It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis as applied to claims 32-35, 37 and 38 above, and further in view of Hendrickson et al.

Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al., as modified above, with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Claims 40, 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Hendrickson et al. Massey et al. discloses an astragal assembly 27 for attachment to a passive door 17 having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending between the exterior surface and the interior surface, the assembly comprising:

a metallic frame 28 fixable to the exterior surface and the interior surface of the passive door, the metallic frame having an exterior portion 83 adjacent to the exterior

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surface of the passive door when the astragal assembly is affixed thereto, an interior portion 84 adjacent to the interior surface of the passive door when the astragal assembly is affixed thereto, a side portion 45 extending between the exterior portion and the interior portion of the metallic frame and opposite to the outer edge of the passive door when the astragal assembly is affixed to the passive door, a gasket 7 interconnected between the exterior portion and the side portion, an interior flange (labeled below) extending from where said interior portion meets said side portion to engage the interior surface of the passive door when the astragal assembly is affixed to the passive door, and an exterior flange (labeled below) extending from where said exterior portion is connected to said gasket to engage the exterior surface of the passive door when the astragal assembly is affixed to the passive door, the interior and exterior flanges spaced apart for accommodating an outer edge of the passive door therebetween, the interior portion, the exterior portion, and the side portion forming an opening in the metallic frame which faces away from the outer edge of the passive door when the astragal assembly is affixed thereto;

an insert 25 disposed in the metallic frame between the interior portion, the exterior portion, and the side portion thereof; and

at least one elongated spacer 43 extending directly from said side portion and having a distal end that engages said insert, said at least one spacer maintaining said wooden insert in position within said opening;

further comprising a hardware component 46 disposed in the insert at the opening in the metallic frame;

wherein the interior flange and the exterior flange extend substantially perpendicular to a major surface of the side portion. Massey et al. is silent concerning a wooden insert.

However, Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al. with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Hendrickson et al. as applied to claims 40, 46 and 48 above, and further in view of Ridge (US 5758458). Massey et al., as modified above, is silent concerning an outer spacer.

However, Ridge, in figure 2, discloses an astragal 150 comprising an outer spacer 152 having a distal end protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 157.

It would have been obvious to one of ordinary skill in the art to provide Massey et al., as modified above, with a spacer, as taught by Ridge, so as to prevent the midsection of the side portion from bending inwardly toward the passive door (see column 6, lines 33-35).

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis. Massey et al. discloses an astragal assembly 27 usable with an active door 18 and a passive door 17 having an exterior surface, an interior surface opposite to the exterior surface, and an outer end disposed between the exterior surface and the interior surface, the assembly comprising:

a frame 28 including an interior portion 84, an exterior portion 83 spaced apart from and opposed to the interior portion, a side portion 45 extending between the interior portion and the exterior portion opposite to the outer end of the passive door when the astragal assembly is attached thereto, a gasket 7 interconnected between the exterior portion and the side portion, an interior flange (labeled below) extending from where the interior portion meets the side portion to engage the interior surface of the passive door when the astragal assembly is attached thereto, an exterior flange (labeled below) extending from where the exterior portion is connected to said gasket to engage the exterior surface of the passive door when the astragal assembly is attached thereto, a channel formed by the exterior portion, the interior portion, and the side portion of the frame, and a door stop (labeled below) extending from the exterior portion of the frame on the opposite side from where the exterior flange is located, said door stop for engaging the active door when the astragal assembly is attached to the passive door;

an insert member 25 disposed in the channel and having a surface exposed to the active door when the astragal assembly is attached to the passive door;

wherein the interior portion and the exterior portion extend away from the outer end of the passive door when the astragal assembly is affixed thereto, and said side

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portion is disposed opposite the outer end of the passive door when said interior and exterior flanges of the frame are disposed on the interior and exterior surfaces of the passive door, respectively;

the frame 28 is metallic. Massey et al. is silent concerning a spacer.

However, Davis discloses an astragal 15" comprising at least one spacer 28" having a distal end 60" protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 20".

It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis as applied to claims 42 and 43 above, and further in view of Hendrickson et al.

Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al., as modified above, with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Response to Arguments

Applicant's arguments, filed March 18, 2009, have been fully considered but they are not persuasive.

Regarding the applicant's comments concerning Davis, the examiner respectfully disagrees. It should first be noted that claim 1 is only reciting the subcombination of an astragal assembly. Thus, the combination of references only need be capable of attaching to a passive door and only need be capable of performing as the applicant has recited. Davis, in figure 4, discloses a spacer 28" since it spaces the plate 18" away from the door jamb J. The spacer 28" prevents an outer edge of the door jamb J from contacting a major surface of the plate 18" and allows air to flow between the outer edge of the door jamb J and the plate 18" since it creates a space between the door jamb J and the plate 18". Clearly, the spacer 28" is capable of performing the functions recited by the applicant. The fact that the spacer 28" does not come into contact with a door is not persuasive because the applicant is only claiming the subcombination of an astragal. The applicant's comments concerning an astral frame assembly being secured to the top and bottom frames of a door is inaccurate. An astral is defined as a narrow, convex molding, often having the form of beading, The American Heritage Dictionary of the English Language, 1973. Thus, an astragal is not limited to being related to a door and definitely is not, by definition, required to be attached to a door. Moreover, an astragal can be attached to a door frame or any other structure since what an astragal is attached to does not determine if it is or is not an astragal.

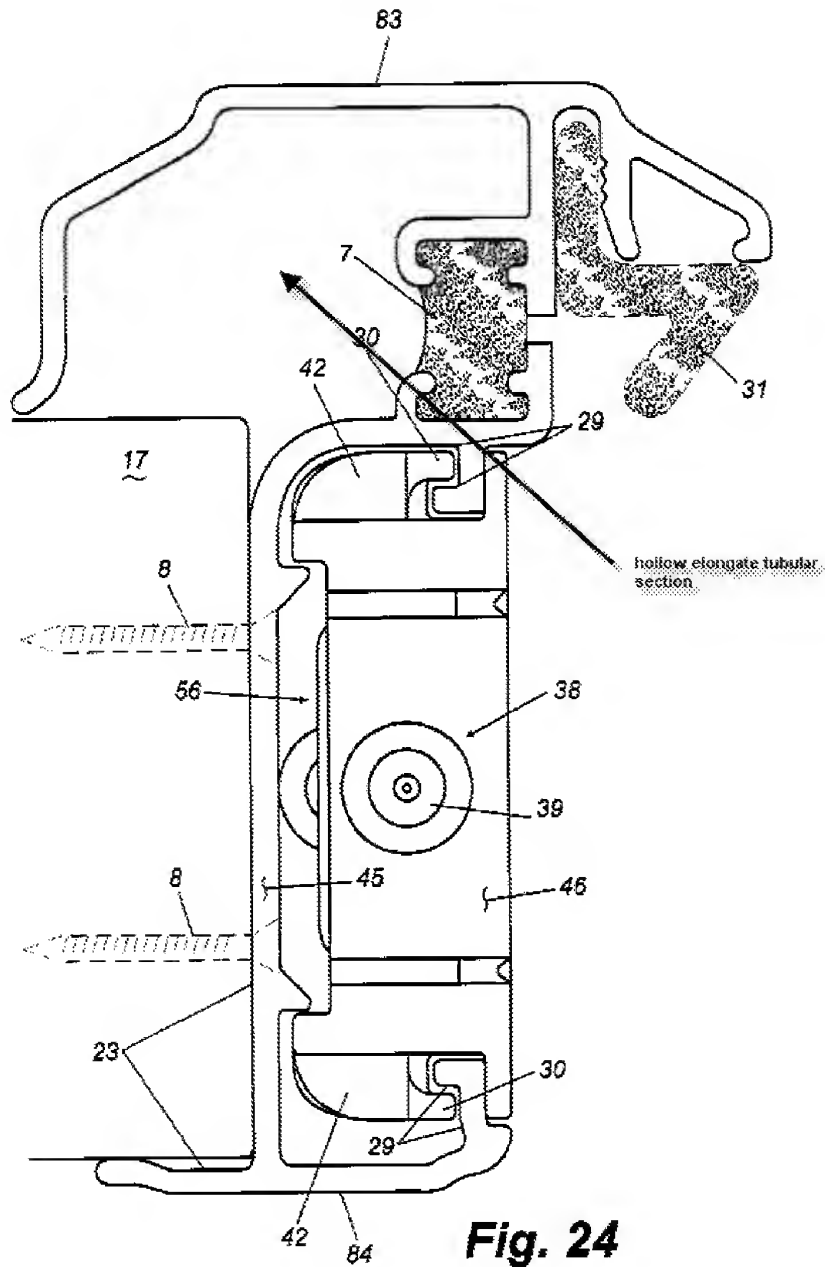
With respect to the applicant's arguments concerning the motivation to combine the references of record, the examiner respectfully disagrees. The rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as to why the modification would have been obvious, the applicant's arguments are not persuasive.

Regarding the applicant's comments concerning Hendrickson et al., the examiner respectfully disagrees. Astragals are often attached to wood structures. Thus, one of ordinary skill in the art would be motivated to construct the insert 25 (see figure 2) of Massey et al. from wood so that the insert would match the wood of the structure to which the astragal is attached. Additionally, it should be pointed out that claim 1 does not require any hardware. The hardware is not recited until claim 8. Moreover, simply attaching hardware, such as a strike plate, would not destroy the overall improvement in the appearance of the insert when constructed of wood. Finally, the examiner is not picking and choosing elements from Hendrickson et al. In fact, the examiner is not picking any element from Hendrickson et al. Rather, the examiner is merely stating that is would have been obvious to one of ordinary skill in the art to make the insert 25 of Massey et al. from wood for the reasons proffered by Hendrickson et al.

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With respect to claim 4, Massey et al. discloses that the insert 25 can comprise multiple elements 106, 114 and 117 in figure 16.

With respect to claim 16, Massey et al. discloses a hollow elongate tubular section identified below. The section is elongate and tubular since it extends the length of the door and is generally in the shape of a tube. Additionally, the section is hollow since it comprises an unfilled space.



With respect to claims 20 and 21, Massey et al., in figure 2, discloses a first piece 25 having a width substantially equal to a distance between the exterior portion and the interior portion and a second piece 46 abutting the side portion.

With respect to claim 40, the spacer 43 extends directly from the side portion because the spacer 43 engages the upper channel 29 (see figure 24) and the upper channel 29 is formed by the side portion. The spacer is an elongate member since its length is longer than its depth. Finally, in figure 2, the spacer 43 includes vertical slots for receiving the vertical protrusions on the back of the insert 25. Also see column 8, lines 29-33 which states that the insert 25 is snapped onto the flush bolt assembly which includes said spacer.

The applicant's comments concerning claim 41 are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634